



PUBLIC NOTICE

Federal Communications Commission
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MEDIA BUREAU SEEKS INFORMATION ON ACCESSIBILITY OF CHILDREN'S EDUCATIONAL AND INFORMATIONAL PROGRAMMING

MB Docket Nos. 18-202 and 17-105

Comments Due: October 7, 2021

Reply Comments Due: November 8, 2021

Through this Public Notice, we invite comment on the accessibility of children's educational and informational television programming to children with disabilities. In 2019, the Commission amended the children's programming rules, the rules by which broadcasters are obligated to serve the educational and informational needs of children.¹ Among other changes, the revised children's programming rules allow broadcast licensees to air a limited amount of short-form programming² and up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream.³ Some commenters raised concerns that these changes may reduce the amount of educational programming accessible to children with disabilities.⁴ Specifically, although all educational and informational programming, including short-form programming and programming aired on multicast streams, is subject to the closed captioning requirements, such programming may fall under one of the exemptions to the closed captioning rules.⁵ In

¹ *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order, 34 FCC Rcd 5822 (2019) (*Report and Order*). The revised children's programming rules at issue took effect on September 16, 2019. *Media Bureau Announces Effective Date and Provides Guidance for KidVid Reporting and Compliance with Revised Safe Harbor Processing Guidelines*, MB Docket Nos. 18-202 and 17-105, Public Notice, 34 FCC Rcd 7878 (MB 2019).

² *Report and Order*, 34 FCC Rcd at 5847-48, paras. 41-42; 47 CFR § 73.671(d) (stating that a television broadcast licensee may count toward its annual children's programming obligation up to 52 hours of Core Programming that is not regularly scheduled on a weekly basis, such as educational specials, regularly scheduled non-weekly programming, and short-form programming). Short-form programs are programs less than 30 minutes in length, including public service announcements and interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs) that are specifically designed to serve the educational and informational needs of children. *Report and Order*, 34 FCC Rcd at 5838-39, para. 25.

³ *Report and Order*, 34 FCC Rcd at 5849, para. 44; 47 CFR § 73.671(d).

⁴ *Report and Order*, 34 FCC Rcd at 5843 nn.135-36, 5851-52 nn.187-88.

⁵ 47 CFR § 79.1(d). Short-form programming may qualify for an exemption from the closed captioning requirements if it is 10 minutes or less in duration and is interstitial material, a promotional announcement (which may conflict with the commercial limits permitted for children's programming), or a public service announcement. 47 CFR § 79.1(d)(6). Short-form programming may also qualify for an exemption if it is locally produced by the broadcast station, has no repeat value (i.e., is aired only once), is of local public interest, is not news programming, and is not able to be captioned using the "electronic news room" technique. 47 CFR § 79.1(d)(8). In addition, the closed captioning rules provide an exemption for program streams with gross revenues of less than \$3,000,000, and some commenters in this proceeding suggested that there are few multicast streams that have reached the \$3,000,000 gross revenues threshold. 47 CFR § 79.1(d)(12); *Report and Order*, 34 FCC Rcd at 5851 n.187.

addition, there is no audio description requirement for multicast streams (that is, programming aired on multicast streams does not count toward the audio described programming requirement).⁶ Thus, although stations may audio describe programming aired on multicast streams voluntarily, budget constraints may make it unlikely that they will do so in a meaningful way. Accordingly, the Commission directed the Media Bureau to issue a Public Notice no later than two years after the effective date of the revised rules seeking information on the extent to which short-form programming and regularly scheduled weekly programming aired on multicast streams is closed captioned and/or audio described, including on multicast channels like PBS KIDS.⁷

Consistent with this directive, we seek comment on the extent to which short-form programming and regularly scheduled weekly programming aired on multicast streams is closed captioned and/or audio described. In particular, we seek specific data on the amount of short-form programming that is closed captioned and/or audio described (e.g., expressed in minutes or hours or as a percentage of the total amount of short-form programming aired on a particular station or channel). Additionally, we seek specific data on the amount of regularly scheduled weekly programming aired on multicast streams that is closed captioned and/or audio described (e.g., expressed in minutes or hours or as a percentage of the total amount of regularly scheduled weekly programming aired on a particular multicast stream).

We also request comment on any changes in the broadcast industry since our revised children's television rules were adopted that have affected the extent to which children's educational and informational programming is accessible. For example, we note that Media reports indicate that Qubo—a 24/7 multicast channel for children that provided closed captioning for all of its educational programming—ceased operations in February 2021.⁸ We seek comment on the impact of this change and whether there are other relevant market developments, such as the launch of new multicast channels for children or programming changes on existing multicast channels, that have impacted the availability of educational children's programming that is closed captioned and/or audio described. Comments filed in

⁶ *Report and Order*, 34 FCC Rcd at 5842-43, para. 34, 5851 n.187. Under the audio description rules, commercial television broadcast stations affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and licensed to a community located in one of the top 60 DMAs are required to provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. 47 CFR § 79.3(b)(1). For purposes of the audio description rules, the term "children's programming" refers to any programming that has a target audience of persons 16 years of age and younger, and it is not limited to children's educational and informational programming. 47 CFR § 79.3(a)(8). The Commission recently modernized the terminology in part 79 of the Commission's rules to use the more common and widely understood term "audio description" rather than "video description." *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 35 FCC Rcd 12577, 12584, para. 14 (2020).

⁷ *Report and Order*, 34 FCC Rcd at 5852 n.188. In response to the concerns raised by commenters, the Commission noted that each broadcast station is required to air at least two-thirds of its Core Programming on its primary stream. The Commission further noted that all educational programming on PBS KIDS and Qubo multicast streams is closed captioned and that PBS voluntarily provides audio description for approximately 80% of its currently available catalog of children's programming on PBS KIDS. *Id.*

⁸ Rob Owen, *What Happened to WINP-TV's ION Plus Channel?*, Tribune-Review (PA) (Mar. 10, 2021) (indicating that Scripps ceased operation of children's network Qubo effective February 28, 2021), <https://triblive.com/aande/movies-tv/tv-qa-what-happened-to-winp-tvs-ion-plus-channel/>; Carolyn Micheli, Press Release, *Scripps Takes First Steps to Realize ION Synergies With Multicast Networks Moves* (Jan. 14, 2021) (stating that following its acquisition of broadcast network ION Media, E.W. Scripps will cease operation of Qubo, effective February 28, 2021), <https://scripps.com/press-releases/scripps-takes-first-steps-to-realize-ion-synergies-with-multicast-networks-move/>. In 2019, ION Media aired 111 hours per week of educational and informational programming for children on Qubo, representing 66% of its schedule, and Qubo received approximately 67% national coverage. *Report and Order*, 34 FCC Rcd at 5831, para. 12.

response to this Public Notice will help inform the Commission's determination of whether additional action is warranted to promote increased accessibility of children's programming on multicast channels and if so, what measures should be proposed or taken.

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements. All filings responsive to this Public Notice must reference MB Docket Nos. 18-202 and 17-105. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a

⁹ 47 CFR § 1.1200 *et seq.*

proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For additional information, contact Kathy Berthot, Kathy.Berthot@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7454.

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